No. [redacted]

IN THE

United States District Court

FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

Civil Case No. 8285.

FROZEN FOOD EXPRESS, et al.,

Plaintiff,

v.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, et al.,

Defendants.

STATEMENT OF JURISDICTION OF THE CLASS I RAILROADS, INTERVENING DEFENDANTS.

MARGARET P. ALLEN,
EDWIN N. BELL,
JOSEPH H. HAYS,
CARL HELMETAG, JR.,
JAMES W. NISBET,
CHARLES P. REYNOLDS,
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1740 Suburban Station Bldg.,
Philadelphia 4, Penna.

Filed: June 17, 1955

International, 236 Chestnut St., Phila. 6, Pa.

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UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.,
Defendants.

In compliance with Rule 13, paragraph 2, of the Revised Rules of the Supreme Court of the United States, the appellant Class I Railroads (intervening defendants in the above-styled action), hereinafter referred to as Railroads, submit herewith their statement particularly disclosing the basis upon which the Supreme Court has jurisdiction on appeal to review the order and judgment of the District Court of three judges entered in this cause. A list of the individual defendant railroads is attached hereto as Appendix A.

OPINION BELOW

The opinion of the United States District Court for the Southern District of Texas, Houston Division, has not yet been reported. Copies of the opinion and final judgment are attached hereto as Appendix B-1 and B-2 respectively.

JURISDICTION

(1)

This proceeding was instituted to enjoin and set aside certain orders of the Interstate Commerce Commission, pursuant to the requirements of 5 U. S. C. A. § 1109; 28 U. S. C. A. §§ 1336, 1398, 2321-2325 and 49 U. S. C. A. § 305(g). The cause was heard by a District Court of three judges in accordance with the requirements of 28 U. S. C. A. § 2325.

(2)

The Court below held that the determination of the Commission in *Determination of Exempted Agricultural Commodities*, 52 M. C. C. 511 (1951) was not an order subject to judicial review and denied relief to the plaintiff and the intervening plaintiff by dismissing their complaints in its judgment entered on February 23, 1955. A Notice of Appeal from this judgment was filed in the United States District Court for the Southern District of Texas, Houston Division, on April 19, 1955.

(3)

Jurisdiction of a direct appeal from a three judge court is vested in the Supreme Court by Statute. 28 U. S. C. A. §§ 1253 and 2101(b).

(4)

The jurisdiction of the Supreme Court of a direct appeal from a three judge district court is also supported by numerous cases such as *United States v. B. & O. R. Co.*, 333 U. S. 169 (1948) and *I. C. C. v. Hoboken R. Co.*, 320 U. S. 368 (1943) and the determinations in 52 M. C. C. 511 are reviewable both as final orders and as interpretative rules, *Columbia Broadcasting System v. United States*, 316 U. S. 407 (1942); *American Trucking Associations v. United*

States, 344 U. S. 298 (1953). Furthermore, that the dismissal of the action in the Court below was not a "favorable decision" which would preclude the defendant railroads from appealing herein has been established in a line of cases beginning with *Corning v. Troy Iron and Nail Factory*, 56 U. S. 451 (1853), since the relief which they sought, and that to which they were entitled, was a review on the merits of the Commission's determinations, which relief was denied by the Court below.

THE QUESTION RAISED ON APPEAL

Whether the district court was in error in holding that the report of the Interstate Commerce Commission in *Determination of Exempted Agricultural Commodities*, 52 M. C. C. 511 (1951), hereinafter sometimes referred to as the *Determination Case*, was not subject to judicial review, either as an "order" within the meaning of the Interstate Commerce Act, or as interpretative rule making under the Administrative Procedure Act? In that proceeding the Commission, after extensive hearings and mature and careful consideration, determined which of several commodities could be transported within the exemption of Section 203(b)(6) of the Interstate Commerce Act (49 U. S. C. A. 303(b)(6)) and which could be transported only in compliance with the regulatory provisions of the Act.

STATEMENT OF CASE

Section 203(b)(6) of the Interstate Commerce Act, as in force at the time material herein, exempted from the regulatory provisions of that Act, with certain exceptions in respect to safety and hours of service which are not here relevant, "motor vehicles used in carrying . . . agricultural commodities (not including manufactured products thereof)." Because of confusion as to the coverage of this exemption from economic regulation, the Commission, in June, 1948, instituted a proceeding on its own motion, docketed as MC-C-968 which was an investigation into and concerning the meaning of the term "agricultural commodities" as used in the above section and to determine whether certain individual commodities or classes of commodities fell within the partial exemption. This proceeding was widely publicized and noticed, and many interested parties intervened including shippers, rail and motor carriers, farmers' organizations, agricultural marketing associations and representatives of the Department of Agriculture, and of a large number of states.

Extended hearings were held before one of the Commission Examiners at which much evidence was submitted and expert testimony was given pertaining to the nature of a large number of commodities and to the processes and treatments to which such commodities are subjected prior to their shipment. Following the submission of testimony and briefs, the Examiner formulated definitions of "agricultural products" and "manufactured products thereof" and issued a recommended report and order in which he classified some of the commodities under one definition and some under the other.

Exceptions were taken to the Examiner's report and the case was heard by the Commission on oral argument. Thereafter the Commission formulated its definitions of the terms "agricultural commodities" and "manufactured products thereof" and, by applying these definitions to the commodities in question, made extensive findings enumerat-

ing which of the commodities under consideration were included within the term "agricultural commodities", and thus exempt, and which were "manufactured products" and thus subject to regulation.

These findings were embodied in the Commission's report entitled *Determination of Exempted Agricultural Commodities*, 52 M. C. C. 511 (1951) and, upon its issuance, the Commission entered its order which incorporated the findings and, as is the usual practice of the Commission when investigations are completed by the formulation of definitive determinations, discontinued the proceedings.

The plaintiff, Frozen Food Express, filed a complaint in July, 1954, against the Commission and the United States, alleging that it desired to transport, irrespective of the limitations of its certificate, certain agricultural commodities and that the above report of the Commission deprived it of its right to do so. Plaintiff further alleged that the Commission's action with respect to certain enumerated commodities was arbitrary, capricious, and was in violation of its statutory powers, and prayed that the report be declared null and void, and that the Commission be enjoined from enforcing its order and from interfering with plaintiff's proposed transportation. The Secretary of Agriculture intervened as plaintiff in support of the contentions with respect to some, but not all, of the enumerated commodities.

In its answer the Interstate Commerce Commission took the position that its order was lawful in every respect and should be upheld. The United States answered to the effect that the order should be upheld except as to certain named commodities. Several trucking associations and a number of eastern, southern, and western railroads intervened as defendants in support of the report of the Commission.

The district court dismissed the above complaints, holding that the determination of the Commission did not constitute an order subject to judicial review. It is from this judgment of the district court that this appeal is taken.

THE SUBSTANTIALITY OF THE QUESTIONS

The issues in this case and in the companion case, No. 8396, being appealed herewith (which arose out of and is based upon the Commission's findings in the *Determination Case*), concern primarily the proper interpretation to be placed upon Section 203(b)(6) of Part II of the Interstate Commerce Act.* That section, often referred to in proceedings before the Commission and elsewhere as the "agricultural exemption", exempts from the economic regulatory powers of the Interstate Commerce Commission:

> ". . . (6) motor vehicles used in carrying property consisting of ordinary livestock, fish (including shell fish) or *agricultural commodities (not including manufactured products thereof)*, if such vehicles are not used in carrying any other property, . . . for compensation." (Emphasis supplied.)

More particularly, Case No. 8285 presents the question of whether or not the order and report of the Commission establishing the Commission's interpretation of this Section are subject to judicial review.

The substantiality of this question lies in the fact that until the Commission's determinations in 52 M. C. C. 511 have been reviewed and held authoritatively to be either proper or improper, in whole or in part, the existing uncertainty concerning the commodities whose transportation is exempt from regulation will continue. That such a result would be detrimental and demoralizing to the entire transportation industry can best be seen by examining the nature of the problem, keeping in mind that this problem has already created manifold difficulties, inconveniences and trouble not only for the Commission, but for the subjects

* Because of this similarity of the questions of law involved, and the substantial identity of the parties, these actions were consolidated for trial in the court below. For this reason, there must of necessity be a certain repetition in the discussion of the two cases in their respective jurisdictional statements.

of regulation, including the motor carriers and the railroads, and for shippers and receivers of vast quantities of commodities which regularily move in the stream of commerce in this nation.

This problem of interpreting and applying the agricultural exemption in such a way as to give it its proper place in the scheme of regulation, and conforming it at the same time to the requirements of the national transportation policy, has had its genesis in the language used by Congress in stating the agricultural exemption. It is immediately apparent in examining the language of Section 203(b)(6) of the Act that Congress has used very broad and general language in describing the types of commodities having a farm origin which, when moving in for-hire transportation, are free of regulation and those which are subject to regulation. Assuming that Congress had a sound basis for exempting the for-hire transportation of farm produce and other things grown on the farm, in order to permit the farmer who owned a truck to share its use with other farmers and thus reduce their marketing costs, nevertheless, the language of Section 203(b)(6) indicates that this objective was not intended to interfere with for-hire transportation handling manufactured or processed agricultural items. The legislative history of the Section confirms this view.

From the very nature of the problem which involves the determination of literally an endless number of individual commodities, and from the general language used by Congress, it is most logical to conclude that Congress intended the Commission to establish the line of demarcation between those commodities having a farm origin that are to be exempt and those which are to move in regulated transportation. It is almost beyond imagination to think of any possible provision of law that by its very terms and by the inherent characteristics of the situation to which it is addressed, would more obviously call for a pattern of administrative interpretation than does Section 203(b)(6)

of the Interstate Commerce Act. If, after viewing the language of the Section in the light of the complexities of the situation with which it deals, there is any doubt as to this, the presence of the Section as part of an act providing a comprehensive scheme of regulation for one of the largest American industries should remove any vestige of doubt. Then too, it must never be forgotten that in 1940 Congress passed the National Transportation Policy which issued a firm mandate to the Commission to interpret and administer each and every section of all four parts of the Interstate Commerce Act so as to provide the nation with a sound and flourishing transportation system.

Even superficial analysis makes it apparent that the job of interpreting and administering the agricultural exemption is one that deals with a great deal more than the abstract or theoretical definitions of the term "agricultural commodities." The interpretation to be given the term ~~must~~ take into account an almost limitless number of practical considerations, relationships between commodities and the processes to which they are subjected, and, perhaps most important of all, the proper meshing of the exception with the other sections of the Act. It would seem, therefore, that any attempt to deal with the Section on a piecemeal basis—that is to determine independently whether a particular commodity is covered by the exemption—would almost certainly be doomed to failure. The history of the litigation before the courts and the Commission when this was attempted proves this to be the case.

Not only would it seem virtually impossible to deal intelligently with the exemption on a piecemeal basis, but it would also seem to be equally unsatisfactory to attempt to arrive at any interpretation without a rich and deep-rooted background into the many facets of the problem. Experience with, and fundamental understanding of, the many ramifications involved would seem to be an essential foundation upon which to build a pattern of interpretation

that would carry out the objectives of Congress, not only as stated in the exemption, but throughout the broad framework of the Act of which the agricultural exemption is one small but important part.

By 1948, the pressures of the initial administration of the regulation of motor carriers and of the war years were past and the Commission was able to address itself to the problem of the exemption on a full scale basis. By this time, the situation in the industry had become most confusing and troublesome not only to the Commission, but as well to the subjects of regulation and the great cross-section of the public-dependent upon for-hire transportation. The harmful effects of the confusion and uncertainty that existed because there was no authoritative interpretation respecting the general applicability given to the term "agricultural commodities" and the correlative term "manufactured products thereof" extended throughout the nation. Piecemeal efforts on the part of the Commission and the Commission's staff to interpret these terms only added to the confusion and uncertainty.

A motor carrier desirous of transporting a particular commodity that had an agricultural origin, but which had received some processing, was faced with the unhappy alternatives of transporting such item beyond regulation and thus subjecting itself to lengthy and expensive litigation and possible criminal penalties for persisting in following a determination once made; or of incurring the expense of securing a certificate of convenience and necessity, publishing tariffs, and living within regulation and thus placing itself at a disadvantage in competing with other bolder carriers who elected to avoid regulation. The advantages of unbridled freedom in doing business beyond regulation outweighed the security of doing business under regulation, so that the growing tendency was for the carriers to resolve all doubt in favor of the non-regulated status. Because of this the number of carriers operating beyond regulation has increased rapidly. This in turn

created serious jeopardy to the financial well-being of motor carriers that had assembled large fleets of expensive equipment under the belief that their certificates of convenience and necessity gave them some degree of protection from excessive competition in the limited and defined areas in which they operated. Similarly, the investment of the nation's railroads, which for many years had hauled virtually all of the nation's agricultural production, and which in handling such traffic were subject to the full impact of regulation under Part I of the Act, was being seriously jeopardized and rendered less valuable by the growth of motor carriers claiming exemption from regulation by the terms of Section 203(b)(6) of the Act. Shippers and receivers too were being adversely affected by the uncertainty of the charges that would be assessed on commodities that originated on the farm, because in many instances marketing practices were largely tied in with, and closely related to, transportation charges.

The situation which was breaking down regulation and promoting fringe, and in some instances deep-seated, violations of the Act, was one that called for broad scale Commission action, for the Commission is the agency to which Congress has given the responsibility not only of making effective the elaborate regulatory scheme of the Interstate Commerce Act, but also of carrying out the regulatory processes to promote a sound national transportation system adequate to handle the need of the nation's commerce at all times. In 1948 the Commission, having become fully aware of the situation as it existed, [and being for the first time in a position to undertake a far-reaching investigation] embarked upon a proceeding having as its objective the interpretation of the agricultural exemption and the classification of specific commodities as being "agricultural commodities" with the result that their transportation would be exempt from regulation or as being "manufactured products thereof" with the result that their transportation would be subject to regula-

tion. This proceeding, generally known as the *Determination Case*, is entitled: *Determination of Exempted Agricultural Commodities*, 52 M. C. C. 511 (1951). It is this case which was before the court in No. 8285 and which the court held to be non-reviewable.

In the *Determination Case* the Commission made specific findings—some of which provided the basis for the complaint against Frozen Food Express, reviewed by the court below in No. 8396—which were carefully considered and formulated in an attempt to bring order out of what was, if not chaos, at least widespread confusion and uncertainty and a growing breakdown of regulation.

The approach of the Commission in attempting to solve the problem seems to have been one peculiarly well adapted to the scope and complexities of the situation as it existed, and one which produced a solution which, if permitted to become effective, will accomplish a great deal. But until the Commission's determinations are either authoritatively decided to be proper, or otherwise, the difficulties that have existed to date will in all likelihood be extended and made more complex to the detriment of the Commission itself, of carriers operating both under, and free of, regulation and of shippers and receivers utilizing for-hire transportation.

Precisely what the Commission did in the *Determination Case* was to undertake the promulgation and prescription of interpretative rules as that term is found and used in the Administrative Procedure Act, although nowhere in the Commission proceedings is the term "interpretative rules" as such used. But, of course, legal or quasi-legal proceedings are appraised and judged in the light of what they actually are, what they seek to accomplish, and what they appear to do, and not what they are said to be.*

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* That the Commission itself viewed its determinations in the *Determination Case* as rules which were to govern future applications of the exemption is clear from the recent Commission decisions in *East Texas Motor Freight Lines, Inc. v. Frozen Food Express*, Docket No. MC-C-1605 (July 1954) and *Allen Kroblin, Inc. Extension—Dairy Products*, Docket No. MC-70252 (Sub.

The Commission, by widespread notices which were well known to those in the transportation industry and to all individuals interested in the transportation of agricultural products, assigned for hearing before one of its examiners an investigation to determine what commodities were agricultural products within the meaning of Section 203(b)(6) of the Act. At the hearing all that had any interest in the problem were permitted to be heard and the Examiner, after receiving briefs from some of the parties, issued a recommended report and order. In this tentative report and order, the Examiner reviewed the history of the exemption, summarized the evidence he had received, made an extensive analysis of the legal precedents that might have been of assistance in determining what interpretation should be given to the Section, and then recommended that the Commission find that specific items were within the exemption and that others were not.

This recommended report and order received similar widespread circulation, was the subject of considerable comment by the trade journals circulated in the transportation business, and was generally available to those who desired to examine it. Thereafter, several persons filed exceptions to the Examiner's recommendation and replies thereto were filed in some instances.

Before reaching any decision on the Examiner's recommendation, the Commission held oral arguments. The Commission, after consideration of all that had gone before, issued its report and order. Again, as had the Examiner, the Commission reviewed the legislative history of the agricultural exemption, the cases in the courts dealing with it and comparable, but not substantially similar, provisions in other statutes, and the evidence and pleadings

No. 5) (April 1955). In both of these cases the Commission relied on its findings in the *Determination Case* and refused to be bound by either the *Kroblin case* (I.C.C. v. Kroblin, 113 F. Supp. 599 (N.D. Iowa 1953) aff'd, 212 F.2d 555 (8th Cir. 1954)), or the lower court decision in the *Frozen Food Case* which is being appealed herewith, (*Frozen Food Express v. United States*, Civ. Action No. 3936 (E.D. Texas 1955)), pending more authoritative determinations on appeal.

submitted before the Examiner. Upon this review, the Commission reached the conclusion that the primary purpose and objective of the agricultural exemption was to aid the farmer to market crops raised on the farm, and that it was not intended to provide a wholesale exemption from economic regulation for all commodities that had an origin on the farm.

The Commission arrived at a definition of the term "agricultural commodities" which would in its opinion carry out the purposes of Congress as it believed those purposes existed. This definition was, 52 M. C. C. 511, 557:

> ". . . we find that the term 'agricultural commodities (not including manufactured products thereof)' as used in section 203(b)(6) of the Interstate Commerce Act means: Products raised or produced on farms by tillage and cultivation of the soil, (such as vegetables, fruits, and nuts); forest products; live poultry and bees; and commodities produced by ordinary livestock, live poultry and bees (such as milk, wool, eggs, and honey), but not including any such products or commodities which, as a result of some treatment, have been so changed as to possess new forms, qualities, or properties, or result in combination."

On the basis of this definition, the Commission found that particular items, for example, fruits, berries and vegetables, were included in the term "agricultural products" and that other items, particularly those having extensive processing, for example, fruits, berries and vegetables packaged in hermetically sealed containers, were not agricultural commodities. Having made such determinations with respect to a vast number of commodities, the Commission, as is its usual practice in general investigations that have been brought to a close as contrasted with those conducted on a continuing or extended basis, issued an order discontinuing the proceedings.

Now, no matter what can be said regarding the soundness of the individual determinations made by the Commission, this much seems beyond controversy: *First*, no one has complained that the Commission procedure leading to the ultimate determinations in the *Determination Case* were unfair, prejudicial, or inadequate. As a matter of fact; based on the requirements of the Administrative Procedure Act respecting rule-making and interpretative rule-making, it would seem that the Commission procedures offered greater safeguards and more ample opportunities to be heard than the minimum standards established for adequate administrative procedure. *Secondly*, and far more important, the individual determinations of the Commission, whether approved by this Court, or found by this Court to be improper, will bring certainty and clarity into a field where it has at no time existed. By the same token, so long as the determinations of the Commission are regarded as outside of the orbit of court review, the confusion and uncertainty that presently exists will worsen to the point where broad areas of the Commission's regulatory sphere will be cast into shadow.

But the need and desirability of this Court's consideration and examination of the decision of the court below, holding that the Commission's order in the *Determination Case* is not reviewable, does not depend solely upon the importance of validating or striking down particular determinations of the Commission so as to simplify and make less confusing the business affairs of a large and important segment of the transportation industry, although certainly, that alone should be persuasive. In addition to the uncertainty and indefiniteness brought about by the broad language of the statute which, as said before, the Commission has attempted to eliminate, there are conflicting court decisions in the several circuits that add to and magnify the difficulties which have been already referred to. Without in any way condemning these several courts, for admittedly the problems with which they were confronted

were intricate and without landmarks to guide ... solution, their opinions dealing with the agricultural exemption have not been very helpful in outlining any principle to be applied in interpreting the language used by Congress.

Unless this Court sees fit to announce the controlling principle governing the interpretation of this Section, the future seems to be one filled with expensive and time-consuming litigation to determine, on a piecemeal basis, whether an almost endless list of particular items that have an agricultural origin are within the scope of the exemption. And since such litigation may be brought in the various circuits of the nation, each of which has varying associations with, and different reactions to, the needs of agriculture, the likelihood of a consistent and clear pattern emerging from such a piecemeal approach is remote indeed. Especially is this the reasonable prognostication if the decisions to date are the basis of a future estimate.

Under these circumstances, it appears that the decision of the court below in Case No. 8285 holding that the order of the Commission in the *Determination Case* was not reviewable is one of the greatest import and one which if reversed will go a long way in bringing to an end a great deal of litigation that to date has been almost entirely unsatisfactory. As such, the issue is certainly a most substantial and important one and one ripe for decision by this Court.

It might well be asked how a decision by this Court, in view of the disturbed background of litigation before the courts and the Commission prior to the *Determination Case*, will work a solution. The answer lies in the fact that the key piece in what up to now has been an insoluble puzzle is, the Appellant Railroads believe, the guiding principle or philosophy to be used in interpreting the agricultural exemption. Once this is authorifatively announced, the rest of the pieces will fall into line.

The Appellant Railroads believe that the precise and explicit determinations reached by the Commission in the *Determination Case* were made possible by the Commission's adoption of a principle of interpreting the Interstate Commerce Act which is well-grounded and supported in the decisions of this Court, and that the confusion which exists in the court cases has arisen because of a failure to recognize this principle of interpretation. This principle is a simple one, and one which if applied to the agricultural exemption eliminates much speculation and doubt. The guiding principle which these Appellant Railroads believe should be applied to the agricultural exemption is that announced by this Court in such cases as *Piedmont & N. Ry. Co. v. Commission*, 286 U. S. 299 (1932); *MacDonald v. Thompson*, 305 U. S. 263 (1938); *Gregg Cartage Co. v. United States*, 316 U. S. 74 (1942) and *Crescent Express Lines v. United States*, 320 U. S. 401 (1943). It is to the effect that because of the great scope and complexities of the regulatory scheme of the Interstate Commerce Act and the many and extensive powers of the Commission which over the years have steadily been increased, all exemptions from regulation should be strictly construed so as to preserve and enhance regulation rather than whittling it down or eroding it. Were this Court to hold the *Determination Case* to be reviewable and to hold further that the application of this principle of interpretation to the agricultural exemption is proper, it is the firm belief of these Appellant Railroads that a detailed review of the Commission's findings respecting individual commodities, by a lower court, would establish beyond all doubt that the Commission's interpretation of the term "agricultural products" and its classifications of the individual commodities in the *Determination Case* were proper. Were this to be done, the confusion that now exists would largely disappear and the Commission could carry out the detailed administration of the agricultural exemption as Congress intended. Similarly, a holding by this Court that the *De-*

termination Case is reviewable and the announcement of a different principle of interpretation to be applied to the agricultural exemption, would enable the Commission under a changed version of the law, to classify commodities having a farm origin as either exempt or non-exempt. In either event, the all-important step that must be taken to establish a comprehensive classification of the endless list of commodities that have a farm origin would be given a tremendous lift, even though this might necessitate—contrary to the views and beliefs of these Appellant Railroads—the beginning of a new determination case by the Commission. Either of these solutions, which depend on this Court's considering the matter, is much to be desired as contrasted with the piecemeal treatment that has not brought, and cannot bring about, sound conditions in the transportation industry and which will of necessity continue if this Court declines to consider these appeals.

CONCLUSION

The Appellant Railroads respectfully submit that the Supreme Court has jurisdiction to review this decision by direct appeal from the District Court under the statutory provisions and the cases cited above. The Appellants further submit that the issues presented by this case are of the requisite substantiality to warrant decision by the Supreme Court. The primary question in this case involves the reviewability of the Commission's determinations in the *Determination Case* and the rule of interpretation which is properly to be placed upon Section 203(b)(6) of the Interstate Commerce Act which exempts motor carriers transporting agricultural products from the economic regulatory powers of the Interstate Commerce Commission. Until this issue is settled authoritatively, the confusion caused by the present lack of certainty and differences of approach in respect to this question will continue to impede the efforts of the Commission effectively to regulate

transportation in accordance with the purposes and policies of the Interstate Commerce Act and the National Transportation Policy and to project an element of uncertainty into the policies of carriers subject to the Act and of the shippers dependent upon them. The existing diversity of holdings among the lower courts emphasizes the need for a decision of this question by the Supreme Court in order that some definite principles of interpretation be authoritatively established which will enable the Commission to carry out its administration of the agricultural exemption in a manner consistent with the Act as a whole.

Respectfully submitted,

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JOSEPH H. HAYS,
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Filed: June 17, 1955.

CERTIFICATE OF SERVICE

I, Carl Helmetag, Jr., one of the attorneys for the Class I Railroads, intervening defendants (appellants) herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that I have served copies of the foregoing Statement of Jurisdiction on the several parties to this action as follows:

1. On the plaintiff, Frozen Food Express, by mailing copies in duly addressed envelopes, with air mail postage prepaid, to its attorneys of record, Carl L. Phinney and Leroy Hallman, First National Bank Building, Dallas, Texas;

2. On the Secretary of Agriculture, as intervening plaintiff, by mailing copies in duly addressed envelopes, with postage prepaid, to his attorneys of record, Charles W. Buey, Walter D. Matson, and Harry Ross, Office of the Solicitor, U. S. Department of Agriculture, Washington 25, D. C.;

3. On the Interstate Commerce Commission, defendant, by mailing copies in duly addressed envelopes, with postage prepaid, to its attorneys of record, Edward M. Reidy and Leo H. Pou, at the office of the Interstate Commerce Commission, Washington 25, D. C.;

4. On the United States of America, defendant, by mailing copies in duly addressed envelopes, with postage prepaid, to its attorneys of record, Honorable Stanley N. Barnes, Assistant Attorney General, and Messrs. James E. Kilday and Charles S. Sullivan, Jr., U. S. Department of Justice, Washington 25, D. C.; by mailing a copy in a duly addressed envelope, with air mail postage prepaid, to its attorney of record, Malcolm R. Wilkey, United States Attorney, Houston, Texas; and by mailing a copy in a duly addressed envelope, with postage prepaid, to the Solicitor General, Department of Justice, Washington 25, D. C.

5. On the several intervening defendants, by mailing copies in duly addressed envelopes, with postage prepaid, to their respective attorneys of record, to wit: David G. Macdonald and Francis W. McInerny, Commonwealth Building, 1625 K Street, N. W., Washington 6, D. C.; Peter T. Beardsley and Fritz Kahn, c/o American Trucking Associations, Inc., 1424 Sixteenth Street, N. W., Washington 6, D. C.; Dale C. Dillon and Clarence D. Todd, 944 Washington Building, Washington 5, D. C., and by mailing copies in duly addressed envelopes, with air mail postage prepaid, to Rollo E. Kidwell, 301 Empire Bank Building, Dallas, Texas; and Lee Reeder, 1012 Baltimore Avenue, Kansas City 5, Missouri.

This 17th day of June, 1955.

CARL HELMETAG, JR.

APPENDIX "A"

LIST OF CLASS I RAILROADS

The below listed Railroads are the individual carriers which, together, are designated in the Statement of Jurisdiction as "Class I Railroads," the intervening defendants appealing herein. When used, the terms "Class I Railroads" or "Appellant Railroads" include each of these named Railroads:

Akron, Canton and Youngstown Railroad Company
The Ann Arbor Railroad Company
The Atchison, Topeka & Santa Fe Railway Company
Atlantic Coast Line Railroad Company
The Baltimore & Ohio Railroad Company
Bangor and Aroostook Railroad Company
Boston and Maine Railroad
Central of Georgia Railway Company
The Central Railroad Company of New Jersey
Chicago & Illinois Midland Railway Company
Chicago and Northwestern Railway Company
Chicago, Burlington & Quincy Railroad Company
Chicago, Great Western Railway Company
Chicago, Indianapolis and Louisville Railway Company
Chicago, Milwaukee, St. Paul and Pacific Railroad Company
Chicago, Rock Island and Pacific Railroad Company
The Delaware and Hudson Railroad
The Delaware, Lackawanna and Western Railroad Company
The Denver and Rio Grande Western Railroad Company
The Detroit and Toledo Shore Line Railroad Company

Detroit, Toledo and Ironton Railroad Company
Duluth, South Shore and Atlantic Railway Company (P. L. Solether, Trustee)
Elgin, Joliet and Eastern Railway Company
Erie Railroad
Florida East Coast Railway Company (John W. Martin, Trustee)
Fort Dodge, Des Moines & Southern Railway Company
Grand Trunk Railway System
Great Northern Railway Company
Green Bay & Western Railroad Company
Gulf, Mobile and Ohio Railroad Company
Illinois Central Railroad Company
The Kansas City Southern Railway Company
Lehigh and New England Railroad Company
Lehigh Valley Railroad Company
Maine Central Railroad Company
Midland Valley Railroad Company
The Minneapolis & St. Louis Railway Company
Minneapolis, St. Paul & Sault Ste. Marie Railroad Company
Missouri-Kansas-Texas Railroad Company
Missouri Pacific Railroad Company (Guy A. Thompson, Trustee)
The Nashville, Chattanooga & St. Louis Railway
New York Central System
The New York, Chicago & St. Louis Railroad Company
The New York, New Haven & Hartford Railroad Company
New York, Ontario and Western Railway
New York, Susquehanna and Western Railroad Company
Norfolk and Western Railway
Northern Pacific Railway Company
The Pennsylvania Railroad Company
The Pittsburgh and West Virginia Railway Company
Reading Company

St. Louis-San Francisco Railway Company
St. Louis Southern Railway Company
Seaboard Air Line Railroad Company
Southern Railway Company
Southern Pacific Company
The Texas and Pacific Railway Company
Toledo, Peoria & Western Railroad
Union Pacific Railroad Company
The Virginian Railway Company
Wabash Railroad Company
Western Maryland Railway
The Western Pacific Railroad Company

APPENDIX "B-1"

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

Civil Action No. 8285

and

Civil Action No. 8396.

FROZEN FOOD EXPRESS,
Plaintiff,

EZRA TAFT BENSON, SECRETARY OF AGRICULTURE OF THE UNITED STATES,
Intervening Plaintiff,

v.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION,
Defendants,

COMMON CARRIER IRREGULAR ROUTE CONFERENCE OF AMERICAN TRUCKING ASSOCIATION, ET AL.,
Intervening Defendants.

Phinney and Hallman (Carl L. Phinney), of Dallas, Texas; for Plaintiff.

Stanley N. Barnes, Assistant Attorney General, and Charles W. Bucy, Associate Solicitor, of Washington, D. C.; for Intervening Plaintiff.

Malcolm R. Wilkey, United States Attorney, of Houston, Texas, and Edward M. Reidy, Chief Counsel of Interstate Commerce Commission, of Washington, D. C.; for Defendants.

Callaway; Reed, Kidwell & Brooks (Rollo E. Kidwell), of Dallas, Texas;

Todd, Dillon & Curtiss (Clarence D. Todd), of Washington, D. C.;

Peter T. Beardsley, of Washington, D. C.;

Baker, Botts, Andrews & Shepherd (J. C. Hutcheson, III and Edwin N. Bell); of Houston, Texas;

Macleay & Lynch (Francis W. McInerny), of Washington, D. C.;

Reeder, Gisler & Griffin (Lee Reeder), of Kansas City, Missouri;

J. W. Nisbet, of Chicago, Illinois;

Carl Helmetag, Jr., of Philadelphia, Pa.;

Rice, Carpenter & Carraway, of Washington, D. C.;

Fulbright, Crooker, Freeman, Bates & Jaworski (W. H. Vaughan, Jr.), of Houston, Texas; for Intervening Defendants.

JANUARY 26, 1955.

Before HUTCHESON, *Chief Circuit Judge* and CONNOLLY and KENNERLY, *District Judges.*

CONNALLY, *District Judge:*

Filed pursuant to Secs. 1336, 1398, and 2321-2325, of Title 28; to Sec. 1009, of Title 5; and to Sec. 305(g), of Title 49, U. S. C. A., each of the foregoing civil actions attacks and seeks to restrain enforcement of an order of the Interstate Commerce Commission. Presenting the same question of law, and substantial identity of parties, the actions were consolidated for hearing and trial. The question for determination is whether a number of different commodities, as later noted herein, all of which have their origin on the farm or ranch, fall within the scope of the so-called agricultural exemption (Sec. 303(b)(6)) of Part II of the Interstate Commerce Act (Title 49, U. S. C. A., Sec. 301,

et seq.). By terms of the last-mentioned statute, motor vehicles used in carrying property consisting of "ordinary livestock, fish (including shell fish), or agricultural (including horticultural) commodities (not including manufactured products thereof)", are exempt from Interstate Commerce Commission control (save for minor exceptions not here pertinent). The plaintiff in each of the consolidated actions, being a trucking concern holding a certificate of convenience and necessity from the Commission, desires to carry some or all of the commodities in question, unrestricted by the terms of its own certificate, or by other Commission regulation. Hence the plaintiff, supported to a considerable extent in this contention by the Secretary of Agriculture of the United States, urges upon the Court a broad interpretation of the statutory language "agricultural commodities (not including manufactured products thereof)", which would have the net result of enlarging this so-called agricultural exemption. The Commission, on the other hand, and those intervenors who align themselves with the Commission, urge upon us that most of the commodities in question, by virtue of the treatment and processing which they receive, either have lost their identity as "agricultural commodities", or have become "manufactured products thereof". The result of this argument is drastically to restrict the scope of the exemption.

CIVIL ACTION 8285.

In June, 1948, the Interstate Commerce Commission, of its own motion, instituted a proceeding, being MC-C-968 on its docket, in the nature of an investigation, to determine the meaning and scope of the term "agricultural commodities (not including manufactured products thereof)", as used in the above-mentioned statute. The proceeding was widely noticed in the affected trades and industries. Many interested parties, including the Secretary of Agriculture of the United States, the Commissioners of Agri-

culture from a number of the States, associations of shippers, motor carriers, and others, intervened. After extended hearings, during which much expert testimony was offered as to the manner and method of cleaning, preparing, packaging, and otherwise processing the various commodities in question, the Commission issued its report and order entitled "Determination of Exempted Agricultural Commodities" (52 I. C. C. Reports, Motor Carrier Cases, 511-566). In such report, the Commission announced its definition of such statutory term,[1] which definition it then undertook to apply to the various commodities under consideration, and enumerated those which it found to come within the statutory language, and those which it found to fall without.[2] Thereupon, the proceeding was terminated and removed from the Commission docket.

1. "In No. MC-C-968, we find that the term 'agricultural commodities (not including manufactured products thereof)' as used in section 203(b)(6) of the Interstate Commerce Act means: Products raised or produced on farms by tillage and cultivation of the soil (such as vegetables, fruits, and nuts); forest products; live poultry and bees; and commodities produced by ordinary livestock, live poultry, and bees (such as milk, wool, eggs, and honey), but not including any such products or commodities which, as a result of some treatment, have been so changed as to possess new forms, qualities, or properties, or result in combinations."

2. "We find that the term 'agricultural commodities (not including manufactured products thereof)' as used in section 203 (b)(6) includes: (1) fruits, berries, and vegetables which remain in their natural state, including those packaged in bags or other containers, but excluding those placed in hermetically sealed containers, those frozen or quick frozen, and those shelled, sliced, shredded, or chopped up; (2) fruits, berries, and vegetables dried naturally or artificially; (3) seeds, including inoculated seeds, but not seeds prepared for condiment use or those which have been deawned, sacrificed or otherwise treated for seeding purposes; (4) forage, hay, straw, corn and sorghum fodder, corn cobs, and stover; (5) (a) hops and castor beans, and (b) leaf tobacco, but excluding redried tobacco leaf; (6) raw peanuts, and other nuts, unshelled; (7) whole grains, namely, wheat, rye, corn, rice, oats, barley and sorghum grain, not including dehulled rice and oats, or pearled barley; (8) (a) cotton in bales or in the seed, (b) cottonseed and flaxseed, and (c) ramie fiber, flax fiber, and hemp fiber; (9) live poultry, namely, chickens, turkeys, ducks, geese, and guineas; (10) milk, cream, and skim milk, including that which has been pasteurized, standardized milk, homogenized milk and cream, vitamin 'D' milk, and vitamin 'D' skim milk; (11) wool and mohair, excluding cleaned and scoured wool and mohair; (12) eggs, including oiled eggs, but excluding: whole or shelled eggs, frozen or dried eggs, frozen or dried egg yolks, and frozen or dried egg albumin; (13) (a) trees which have been felled and those trimmed, cut to length, peeled or split, but not further processed, and (b) crude resin, maple sap, bark, leaves, Spanish moss, and greenery; (14) sugar cane, sugar beets, honey in the comb, and strained honey."

The plaintiff Frozen Food Express was not a party to the proceeding before the Commission. By amended complaint filed here July 12, 1954, plaintiff alleges that it desires to carry agricultural commodities (not including manufactured products thereof) for hire, to and from all points within the United States, irrespective of the limitations imposed by its own certificate; that the report of April 13, 1951, deprives plaintiff of its right to do so. Alleging that the action of the Commission, in entering the report in question, was arbitrary, capricious and unreasonable, that it constituted an abuse of discretion and a violation of the Commission's statutory powers, the plaintiff here seeks an injunction to restrain the Commission and the United States from enforcing or recognizing the validity of such report; restraining interference with the plaintiff's proposed transportation of such agricultural commodities (not including manufactured products thereof), and seeks an order of this Court declaring the report of the Commission of April 13, 1951, to be null and void.

The Secretary of Agriculture has intervened, denominating himself "Intervening Plaintiff". He makes common cause with plaintiff in contending that a number of commodities[3] are within the exemption. Several trucking associations, and some sixty southern and western railroad companies, have intervened. These intervenors take a contrary view, and support the report of the Interstate Commerce Commission.

We are of the opinion that the action may not be maintained, and must be dismissed, for the reason that the report and order of the Interstate Commerce Commission of April 13, 1951, is not an "order" subject to judicial re-

3. "(1) Slaughtered meat animals and fresh meats;
(2) Dressed and cut-up poultry, fresh or frozen;
(3) Feathers;
(4) Raw shelled peanuts and raw shelled nuts;
(5) Hay chopped up fine;
(6) Cotton linters and cottonseed hulls;
(7) Frozen cream, frozen skim milk, and frozen milk;
(8) Seeds which have been deawned, sacrificed, or innoculated."

view under any of the statutes cited. The proceeding before the Commission was no an adversary one. The order which initiated it purported to do no more than direct that an investigation be made of the meaning of the statutory language. Notice was given only to the public. When the final report and order was forthcoming some two years later, the only "order" entered was one discontinuing the proceeding and removing it from the Commission's docket. The question is controlled by *U. S. v. Los Angeles R. R. Co.* (273 U. S. 284), holding a very similar "order" of the Interstate Commerce Commission which found, after an investigation, the value of certain railroad properties, not to be subject to review. The language of Mr. Justice Brandeis, speaking for a unanimous Court there, aptly describes the order in issue here:

> "The so-called order here complained of is one which does not command the carrier to do, or to refrain from doing, any thing; which does not grant or withhold any authority, privilege or license; which does not extend or abridge any power or facility; which does not subject the carrier to any liability, civil or criminal; which does not change the carrier's existing or future status or condition; which does not determine any right or obligation. This so-called order is merely the formal record of conclusions reached after a study of data collected in the course of extensive research conducted by the Commission, through its employees. It is the exercise solely of the function of investigation."

The proponents of jurisdiction here rely upon *Columbia Broadcasting System v. U. S.* (316 U. S. 407). It was there held that an order of the Federal Communications Commission promulgating certain rules and regulations requiring that the Commission deny a license to broadcasting stations under certain circumstances, was subject to judicial review, upon a showing by the complaining party of strong equitable considerations. This authority is clearly

distinguishable from the present case. The order there in question was entered in the exercise of the agency's rule-making power. Such orders, together with those fixing rates and those determining controversies before the administrative body, have long been recognized as subject to review (*U. S. v. Los Angeles R. R. Co.*, supra).

Likewise, the complaining party there showed an immediate and continuing threat of irreparable injury if the order were not reviewed. It is not so here. The statement of plaintiff that it desires to carry for hire most or all of the commodities on the Commission's proscribed list, and that if it does so, the Commission likely will seek injunctive relief to restrain plaintiff, shows no basis for the intervention of a court of equity. Plaintiff will have an adequate remedy in the event of such interference.

It follows that Civil Action 8285 will be dismissed.

Civil Action 8396:

A complaint was filed December 23, 1953, with the Interstate Commerce Commission by East Texas Motor Freight Lines, Gillette Motor Transport, Inc., and Jones Truck Lines, Inc., charging that Frozen Food Express was and had been engaged in transporting fresh and frozen dressed poultry, and fresh and frozen meats, and meat products, for hire, between points in interstate commerce not authorized by its certificate of convenience and necessity. Frozen Food readily admitted that it had been so engaged, but defended on the theory that such products all were within the agricultural exemption. The Commission found each of these products not to be within the exemption, and ordered Frozen Food Express to cease and desist from such unauthorized transportation. The present proceeding was filed by Frozen Food Express to review that order.[5]

While the present action was pending in this Court, the Secretary of Agriculture of the United States filed with

5. Plaintiff has abandoned the contention that meat products are within the agricultural exemption, and this commodity will not be further considered here.

the Commission his petition for leave to intervene, pursuant to Sec. 1291, of Title 7, U. S. C. A. This request was denied; and the Secretary appears here as "Intervening Plaintiff", contending (1) that the proceedings before the Commission were null and void by reason of the failure of the Commission to notify him of the pendency thereof (Sec. 1291(a), of Title 7, U. S. C. A.); (2) that the proceedings should be remanded to the Commission by reason of its error of law in having denied him leave to intervene; and (3) that the cease and desist order should be enjoined by reason of the alleged error of the Commission in holding fresh and frozen meats, and fresh and frozen dressed poultry, to be beyond the limits of the agricultural exemption.

The rail carriers and trucking associations which intervened in Civil Action 8285, also appear in this action. They support the Commission, and oppose the position taken by the plaintiff and the Secretary of Agriculture.

Armour & Company, being engaged at various points in the United States in the slaughter of livestock and the killing, dressing, and sale of poultry, has intervened, urging that dressed poultry is an exempt commodity, that meat is not.

The position taken by the Secretary of Agriculture that the proceeding before the Commission was null and void in its entirety by reason of the failure of the Commission to give him notice thereof, need not long detain us. The proceeding there was not one with respect to "rates, charges, tariffs, and practices" relating to the transportation of farm products, and hence was not one of which the Secretary was entitled to notice under the statute (Secs. 1291 and 1622, of Title 7, U. S. C. A.): *U. S. v. Pa. R. R. Co.* (242 U. S. 208); *B. & O. R. R. Co. v. U. S.* (277 U. S. 292); *Mo. Pac. R. R. Co. v. Norwood* (283 U. S. 249). The Commission likewise did not commit an error of law in denying the Secretary's Petition of Intervention, filed there while the present proceeding was pending here.

Most able and exhaustive treatment is given the question now before us, in so far as it concerns dressed poultry, by Judge Gavin of the United States District Court for the Northern District of Iowa, in *I. C. C. v. Kroblin* (113 F. Supp. 599, aff. 212 F. 2d 555, cert. den. Oct. 14, 1954). Reviewing the long struggle between the Interstate Commerce Commission in its efforts to restrict the application of the exemption in question, and the Department of Agriculture and others in seeking to expand it; reviewing the legislative history of the Motor Carrier Act of 1935, and various proposed amendments thereto; and considering the congressional intent which prompted the insertion of the agricultural exemption, Judge Gavin concluded that dressed poultry constituted an "agricultural commodity", and did not constitute a "manufactured product thereof". Hence, such commodity was within the exemption. It is sufficient to state that we agree with those conclusions as to fresh and frozen dressed poultry.

Counsel for the Commission urges that this Court should disregard the *Kroblin* case, on the argument that the only question before us is one of the adequacy of the evidence before the Commission. It is said that the order which was entered was one within the general purview of the Commission's authority, and that if its findings are supported by "substantial evidence", this Court has no alternative but to leave it undisturbed. While we do not quarrel with such statement as a general proposition of law, the argument is not convincing in its application to the present record. The primary facts before the Commission were without dispute and were the subject of stipulation. Reduced to simplest form, they showed that before a chicken or duck became "dressed poultry", the bird was killed, his feathers and entrails removed, he was chilled, and in some cases frozen, packaged, etc. In addition, such "facts" consisted of evidence of so-called "expert" nature, that this treatment or processing of the chicken or duck rendered him a "manufactured product".

It is apparent that there is only one ultimate finding called for, namely, whether under the type of processing reflected by the record, the product falls within the statutory definition. The question then is a mixed one of law and fact, calling for the application of the processes of legal reasoning and of principles of statutory construction. The fact that the Commission's findings are supported by an "expert" who gives his opinion that a dressed chicken is a manufactured product, does not foreclose the question, nor remove it from the scope of judicial review. *Baumgartner v. U. S.* (322 U. S. 665); *Lehmann v. Acheson* (206 F. 2d 592, 3C); *Galena Oaks Corp. v. Schofield* (— F. 2d —, 5C; Dec. 29, 1954, as yet unreported).

In our opinion, fresh and frozen meat does not fall within the category either of "ordinary livestock" or of "agricultural commodities", and hence is not within the exemption. Since the enactment of Part II of the Interstate Commerce Act in 1935, motor vehicles used exclusively in carrying "livestock, fish (including shell fish), or agricultural commodities (not including manufactured products thereof)", have been exempt. By amendment in 1940, the term "ordinary" was inserted immediately before the word "livestock". The term "ordinary livestock" is defined in Sec. 20(11) of the Act as "all cattle, swine, sheep, goats, horses, and mules, except such as are chiefly valuable for breeding, racing, show purposes, or other special uses".

Referring only to the live animals, "ordinary livestock" may not be tortured to include the carcasses of slaughtered meat animals, or the meat which is the product of butchering. Meat has been regarded generally in the industry as a controlled commodity for some twenty years. Congress has dealt with the agricultural exemption on many occasions. Considering the ease with which the Congress might have added appropriate language to evidence its intent to exempt fresh or frozen meat from Interstate Commerce Commission control, if it so desired, the absence of such language indicates that no such intent was entertained.

Nor may meat, fresh or frozen, be considered an "agricultural commodity" for present purposes. The exemption has treated the live meat animal in a separate generic class from "agricultural commodity" since the enactment of the statute; and if the live animal, on entering the slaughter pen or the packing house, is not an "agricultural commodity", we are unable to see how he becomes one on emerging therefrom in the form of beef or pork. The Commission was correct, in our opinion, in holding fresh and frozen meat to be non-exempt.

The enforcement of the order of the Interstate Commerce Commission, MC-C-1605, East Texas Motor Freight Lines, Inc., et al. v. Frozen Food Express, is enjoined and restrained in so far as said order interfered with, enjoins or restrains the plaintiff Frozen Food Express from transporting fresh and frozen dressed poultry in interstate commerce (when the motor vehicles used in carrying such poultry are not used for carrying any other property or passengers for compensation). Other relief sought by plaintiff is denied.

Clerk will notify counsel.

Done at Houston, Texas, this 26th day of January, 1955.

JOSEPH C. HUTCHESON JR.
Chief Judge, Fifth Circuit
BEN C. CONNOLLY
United States District Judge
J. M. KENNERLY
United States District Judge
Concurring in Part and Dissenting in Part

TRUE COPY I CERTIFY

ATTEST:

V. BAILEY THOMAS, *Clerk*
By EDWARD A. BLYTHE,
Deputy Clerk

KENNERLY, *District Judge:*

Concurring in part and dissenting in part.

I concur with all the foregoing opinion except the decision in Civil Action 8396 with respect to fresh meat and frozen meat. As to that I respectfully dissent.

I think all of Section 303(b) should be given a broad and liberal construction, and that Section 303(b)(6) should be construed as including fresh meat and frozen meat. I think we should not only follow the reasoning of both the District Court and Court of Appeals in the Kroblin case with respect to dressed poultry and frozen dressed poultry, but that what is said is also applicable to fresh meats and frozen meats.

J. M. KENNERLY, *Judge*

Filed 26 day of Jan., 1955.

V. BAILEY THOMAS, *Clerk*
By RUBY MILLER, *Deputy*

TRUE COPY I CERTIFY

ATTEST:

V. BAILEY THOMAS, *Clerk*
By EDWARD A. BLYTHE,
Deputy Clerk

APPENDIX "B-2"

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

Civil Action No. 8285

FROZEN FOOD EXPRESS, ET AL.,
Plaintiffs,

v.

UNITED STATES OF AMERICA,
INTERSTATE COMMERCE COMMISSION, ET AL.,
Defendants.

Judgment

This action, to enjoin and set aside an order of the Interstate Commerce Commission, having come on for final hearing on November 16, 1954, before a duly constituted three-judge District Court, convened pursuant to Sections 2284 and 2321-2325, Title 28, United States Code, consisting of the undersigned judges; and the Court having considered the pleadings and evidence, and the briefs and arguments of counsel for the respective parties, and being fully advised in the premises; and having on January 26, 1955, filed herein its opinion, holding that the order sought by the plaintiffs to be set aside and enjoined is not an order subject to judicial review under any of the said statutes; now, in accordance with the said opinion, it is hereby

ORDERED, ADJUDGED, AND DECREED that the relief prayed for by the plaintiffs, including the Secretary of Agriculture

as an intervening plaintiff, be, and the same hereby is, denied, and their complaints be, and the same hereby are, dismissed.

This the 23rd day of February, 1955.

/s/ JOSEPH C. HUTCHESON, JR.,
Chief Judge, United States Court of Appeals for the Fifth Circuit.

/s/ THOMAS M. KENNERLY,
United States District Judge.

/s/ BEN C. CONNALLY,
United States District Judge.